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U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT COMMITTEE
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File Boland Amends

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MEMORANDUM FOR THE RECORD

FROM: *DS*
David S. Addington
Counsel, Subcommittee on Legislation

SUBJECT: Dates of Applicability of Statutory Restrictions Relating to
Paramilitary Activities in Nicaragua

1. Summary. The "Boland Amendment" restriction on use of funds for the purpose of overthrowing the Government of Nicaragua was in force from December 21, 1982 to December 8, 1983. The "\$24 million cap" restriction on use of funds to support paramilitary operations in Nicaragua was in effect from December 8, 1983 through September 30, 1984; however, any funds expended in fiscal year 1984 prior to enactment of the \$24 million ceiling would count against the ceiling. A full prohibition on use of funds to support paramilitary activities in Nicaragua applied from October 1, 1984 through October 11, 1984. Another full prohibition went into effect on October 12, 1984 and remained in effect through December 19, 1985. From December 4, 1985 to October 18, 1986, restrictions allowed only certain communications support and certain infrastructure expenditures. As of October 18, 1986, the law permitted a program of \$100 million in aid to the Nicaraguan democratic resistance under a number of restrictions and conditions. Also, since August 8, 1985, Nicaragua-related restrictions on certain foreign aid funds, and on use of any authorized funds in contravention of international law without authorization by law, have been in effect. The texts of the various Nicaragua-related restrictions appear below.

2. The Boland Amendment. On December 21, 1982, the Boland Amendment became law as section 793 of the Department of Defense Appropriation Act, 1983 incorporated in the Continuing Appropriations Resolution for Fiscal Year 1983 (Public Law 97-377). The Boland Amendment provided:

"Sec. 793. None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras." [Emphasis added]

The term "this Act" refers to the DoD Appropriation Act, 1983. That Act provided the funds for U.S. Government intelligence activities only until the end of fiscal year 1983 (September 30, 1983), except that Section 751 of the Act provided for availability for two years of funds appropriated to the

Reserve for Contingencies of the CIA. Section 751 provided:

"Sec. 751. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve, which shall remain available until September 30, 1984."

Thus, the Boland Amendment, when it became law on December 21, 1982, had the following effect with respect to the CIA:

-- A one fiscal year prohibition to expire on September 30, 1983 on CIA use of funds appropriated by the DoD Appropriations Act, 1983 (except for the CIA Reserve).

-- A two fiscal year prohibition to expire on September 30, 1984 on CIA use of funds appropriated by the DoD Appropriations Act, 1983 to the CIA Reserve for Contingencies. 1/

3. Extension by Continuing Appropriations Resolution for FY 1984. On October 1, 1983, the Continuing Appropriations Resolution for Fiscal Year 1984 (Public Law 98-107) became law. The Preamble and Section 101(c) of that Resolution provided:

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1984, and for other purposes, namely:

1/ Even after enactment of the Boland Amendment restricting use of funds provided by the DoD Appropriations Act, 1983, the CIA Reserve contained funds provided for two-year availability by the DoD Appropriations Act, 1982 (Public Law 97-114, December 29, 1981, Sec. 752). These FY 1982 funds in the Reserve were made available until September 30, 1983. Thus, even after enactment of the Boland Amendment on December 21, 1982, funds technically were available to the CIA in the Reserve that were not subject to the Boland Amendment restriction. The significance of the technical availability of these FY 1982 funds not subject to the Boland Amendment may be slight given the historical accounting practices of the CIA. Apparently, the CIA has not used funds from the Reserve to pay the salaries of CIA personnel; they are paid from other funds, which, during the relevant period, would have been subject to the Boland Amendment restriction. Thus, although CIA may have had FY 1982 funds in the Reserve that were not subject to the Boland Amendment restriction, the CIA would have had no way to release, obligate or expend those funds except by use of Boland Amendment restricted funds, since action by CIA-salaried personnel is required to release, obligate or expend funds. In short, while the CIA had available FY 1982 unrestricted funds in the Reserve, the bureaucratic process of making use of those funds would have required use (by obligations or expenditures allocable to CIA staff salaries) of funds restricted by the Boland Amendment.

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" . . . (c) Pending enactment of the Department of Defense Appropriation Act, 1984, such amounts as may be necessary for continuing activities . . . which were conducted in fiscal year 1983 . . . but such activities shall be funded at not to exceed an annual rate for new obligational authority of \$247,000,000,000 . . . and this level shall be distributed on a pro rata basis . . . and shall be available under the terms and conditions provided for in the applicable appropriation Acts for fiscal year 1983 . . ." [Emphasis added]

By virtue of this provision, the Boland Amendment restriction continued to apply after September 30, 1983 to funds provided by the first FY 1984 Continuing Resolution. By operation of Section 102 of that Resolution, this temporary extension of the applicability of the restriction expired on November 10, 1983.

4. Additional Extension by Further Continuing Appropriations Resolution for FY 1984. On November 14, 1983, the further continuing appropriations resolution for fiscal year 1984 (Public Law 98-151) became law. The Preamble and Section 101(a) of the Further Continuing Appropriations Resolution contained the same language as the first Continuing Resolution concerning expenditures pending enactment of the Department of Defense Appropriation Act, 1984. Thus, the Boland Amendment restriction continued to apply, to funds provided by the FY 1984 Further Continuing Resolution, from November 14, 1983 until enactment of the DOD Appropriation Act, 1984. 2/

5. End of the Boland Amendment Restriction with DoD Appropriation Act, 1984. On December 8, 1983, the Department of Defense Appropriation Act, 1984 (Public Law 98-212) became law. Section 775 of that Act provided:

"Sec. 775. During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

The Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215), which became law on December 9, 1983, contained an identical provision

2/ The Boland Amendment restriction technically was not in force during the funding hiatus between midnight Thursday, November 10, 1983 and November 14, 1983. However, sections 102, 103 and 107 of the Further Continuing Appropriations Resolution for Fiscal Year 1984 would appear to render the Nicaragua funding restriction technically applicable retroactively with respect to obligations and expenditures during the funding hiatus.

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(Sec. 108). The DoD Appropriation Act, 1984, enacted on December 8, 1983, did not carry forward the Boland Amendment restriction. ^{3/} The \$24,000,000 cap provision of the FY 1984 DOD Appropriations Act and the FY 1984 Intelligence Authorization Act expired at the close of fiscal year 1984, on September 30, 1984.

6. Full Prohibition on Support for Paramilitary Activities Contained in Temporary Continuing Resolutions. On October 3, 1984, the First Continuing Appropriations Resolution for Fiscal Year 1985 (Public Law 98-441) became law. The Preamble and Section 101(a) of that Resolution provided in part:

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated. . . namely:

Sec. 101.(a) Such amounts as may be necessary for continuing projects and activities which were conducted in the fiscal year 1984, and for which provision was made in the following appropriation Acts, at the rate for operations, under the terms and conditions, and to the extent and in the manner provided for in the fiscal year 1984 unless otherwise provided for in this joint resolution:
 . . . Department of Defense Appropriation Act, 1984 . . ."
 [Emphasis added]

Section 106(c) of the Resolution provided that:

"No appropriations or funds made available pursuant to this joint resolution to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual."

^{3/} It should be noted that obligations and expenditures in fiscal year 1984 made prior to enactment of the \$24 million ceiling counted against the ceiling.

It could be argued that the initial Boland Amendment restriction technically continued to apply until September 30, 1984 with respect to the funds appropriated on a two fiscal year availability basis to the CIA Reserve for Contingencies by the DoD Appropriations Act, 1983. It could equally well be argued that, on the contrary, Congress intended the \$24,000,000 cap provision in Section 775 of the DoD Appropriations Act, 1984 (and the identical Section 108 of the Intelligence Authorization Act for FY 1984) to be the exclusive governing appropriations restriction with respect to paramilitary activities in Nicaragua, and it thus superseded the applicability of the Boland Amendment to the two-year money remaining in the Reserve provided by the DoD Appropriation Act, 1983.

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Thus, a full prohibition on use of funds to support paramilitary operations in Nicaragua took effect on October 3, 1984. 4/

The First Continuing Resolution, which would otherwise have expired on October 3, 1984 (the day it became law) was subsequently extended to 6 p.m. EDT on October 5, 1984 (Public Law 98-453), October 9, 1984 (Public Law 98-455), and October 11, 1984 (Public Law 98-461). Thus, the full prohibition on use of funds for support of paramilitary operations in Nicaragua which entered into effect on October 3, 1985, remained applicable through October 11, 1985.

7. Fiscal Year 1985 Full Prohibition. On October 12, 1984, the Further Continuing Appropriations Resolution for Fiscal Year 1985 (Public Law 98-473) became law. Section 8066(a) of the Department of Defense Appropriations Act, 1985, as incorporated in the Resolution, stated:

"Sec. 8066. (a) During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

4/ No Nicaragua related prohibition was in effect during the funding hiatus which occurred on October 1 and 2, 1984. However, sections 102, 103 and 106(c) of the first Continuing Resolution (Public Law 98-441) would appear to render the full prohibition relating to Nicaragua applicable with respect to obligations and expenditures during the funding hiatus, except, technically, with respect to two-year money appropriated to the Reserve for Contingencies (and five-year money for CIA building construction) by the FY 1984 DOD Appropriations Act (Sec. 747).

The two-year money appropriated to the CIA Reserve for Contingencies by the DOD Appropriations Act, 1984 (and authorized by the Intelligence Authorization Act for Fiscal Year 1984) was available for use free of restriction after September 30, 1984, until the restriction contained in Section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) took effect on November 8, 1984. See note 6 below. However, because (a) execution of a Reserve Release requires use of non-Reserve money allocable to CIA staff salaries (see note 1 above) and (b) the various continuing resolutions made Nicaragua restrictions applicable to all money available to CIA other than the two-year Reserve money, the two-year Reserve money technically available between October 1 and November 8, 1984 for support of paramilitary operations in Nicaragua could not have been used, since it could not have been released without use of funds subject to the Nicaragua prohibition.

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Subsequent provisions of Section 8066 provided that the prohibition in Section 8066(a) would cease to apply if (1) the President submitted a report to Congress after February 28, 1985 explaining the need for assistance for paramilitary operations in Nicaragua and (2) Congress, under procedures for expedited votes, approved such assistance, not to exceed \$14 million, by a joint resolution. The President submitted the report contemplated by Section 8066 on April 3, 1985. The Congress did not pass a joint resolution approving assistance, 5/ and the prohibition contained in Section 8066(a) remained in effect.

Thus, from October 12, 1984, a full prohibition existed on use of funds available during fiscal year 1985 to CIA, DOD and other intelligence entities to support paramilitary activities in Nicaragua. 6/ Subsequently, a statute was enacted making clear that nothing in Section 8066(a), or the corresponding prohibition in the FY 1985 Intelligence Authorization Act (see note 6), prohibited the United States Government from exchanging information

5/ A joint resolution approving assistance (S.J. Res. 106) passed the Senate on April 23, 1985; that same day, a joint resolution (H.J. Res. 239) approving assistance failed of passage in the House.

6/ Section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618, November 8, 1984) provided identical treatment of the question of support for paramilitary activities by incorporating by reference the Continuing Resolution provision (Section 8066, DOD Appropriations Act 1985):

"Sec. 801. No funds authorized to be appropriated this Act or by the Intelligence Authorization Act for fiscal year 1984 (Public Law 98-215) may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual, except to the extent provided and under the terms and conditions specified by House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and for other purposes, as enacted."

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with the Nicaraguan democratic resistance or from administering a specific program of humanitarian assistance to the resistance. 7/

7/ Section 722 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; August 8, 1985) authorized an appropriation of \$27,000,000, to remain available for obligation through March 31, 1986, for humanitarian assistance to the Nicaraguan democratic resistance. The chapter entitled "HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE" of the Supplemental Appropriations Act, 1985 (Public Law 99-88; August 15, 1985) appropriated \$27,000,000, to remain available for obligation through March 31, 1986, for humanitarian assistance to the Nicaraguan democratic resistance, defining the term "humanitarian assistance" as "food, clothing, medicine and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles or material which can be used to inflict serious bodily harm or death." Section 102(b) of the "GENERAL PROVISIONS" in that chapter of the Supplemental Appropriations Act, 1985, provided that:

"(b) Nothing in this Act, section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473), or section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall be construed to prohibit the United States Government from exchanging information with the Nicaraguan democratic resistance, or the obligation and expenditure, but only for the purposes for which they are expressly made available, of the funds appropriated by this chapter under the headings 'HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE' and 'ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT'."

Thus, Section 102(b) made clear that the prohibition on support for military or paramilitary operations in Nicaragua did not apply to information exchange or the specified humanitarian assistance program. Section 102(a), however, provided that:

"(a) The prohibitions contained in section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473) and section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall, without limitation as to fiscal year, apply with respect to funds appropriated by this chapter under the headings 'HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE' and 'ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT'."

Thus, without fiscal year limitation, the prohibition on obligating or expending funds for support of military or paramilitary operations in Nicaragua applied to the \$27,000,000 provided by the Supplemental Appropriations Act, 1985 for humanitarian aid to the Nicaraguan democratic resistance.

See House Report 99-373, the conference report to accompany H.R. 2419, the Intelligence Authorization Act for Fiscal year 1986, p. 16, for a discussion of the scope of the humanitarian aid program as it relates to transportation.

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By its own terms, the prohibition contained in Section 8066(a) of the DOD Appropriations Act, 1985, applied during fiscal year 1985, which ended on September 30, 1985. However, the prohibition continued in force by operation of a series of continuing appropriation resolutions through December 19, 1985. The preamble and Section 101(c) of the first continuing appropriations resolution for fiscal year 1986 (Public Law 99-103; September 30, 1985) provided:

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the government for fiscal year 1986, and for other purposes, namely:

. . . (c) Such amounts as may be necessary for continuing activities, not otherwise specifically provided for in this joint resolution, which were conducted in the fiscal year 1985, for which provision was made in the Department of Defense Appropriation Act, 1985, under the current terms and conditions and at a rate for operations not in excess of the current rate . . ." [Emphasis added]

By virtue of this provision and Section 102(c) of the first continuing appropriations resolution, the Section 8066(a) prohibition continued in force after September 30, 1985 until November 14, 1985. A further continuing appropriations resolution (Public Law 99-154) had the effect of extending the prohibition from November 14, 1985 to December 12, 1985; another further continuing appropriations resolution (Public Law 99-179) had the effect of extending it from December 12, 1985 to 6 p.m., EST, December 16, 1985; and yet another further continuing appropriations resolution (Public Law 99-184) had the effect of extending it from 6 p.m. EST on December 16, 1985 to December 19, 1985. 8/

8. Restrictions Relating to Foreign Aid Funds and Compliance with International Obligations. On August 8, 1985, the International Security and Development Cooperation Act of 1985 (Public Law 99-83) became law. Section 722(d) of that Act provided:

"(d) PROHIBITION RELATING TO MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA. -- Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act (except the funds authorized to be appropriated in this section), by the Foreign Assistance Act of 1961, or by the Arms Export Control Act shall be used to provide assistance of any kind, either directly or indirectly, to any person or group engaging in an insurgency or other act of

8/ The Section 8066(a) prohibition technically was not in force during a funding hiatus which occurred on December 17, 1985. However, Sections 103 and 104 of Public Law 99-103 as amended by Public Laws 99-154, 179, and 184 would appear to render the prohibition technically applicable retroactively with respect to obligations and expenditures during the funding hiatus.

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rebellion against the Government of Nicaragua. The United States shall not enter into any arrangement conditioning, expressly or impliedly, the provision of assistance under this Act or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient to persons or groups engaging in an insurgency or other act of rebellion against the Government of Nicaragua."

In addition, Section 722(e) provided:

"(e) LIMITATION ON USE OF FUNDS AGAINST NICARAGUA. -- None of the funds authorized to be appropriated in this or any other Act can be used to fund directly, or indirectly, activities against the Government of Nicaragua which have not been authorized by, or pursuant to, law and which would place the United States in violation of our obligations under the Charter of the Organization of American States, to which the United States is a signatory, or under international law as defined by treaty commitments agreed to, and ratified by, the Government of the United States."

Unlike previous statutory restrictions relating to Nicaragua, the limitations in Section 722(d) on use of certain foreign aid funds, and in Section 722(e) on compliance with international obligations, are not limited in scope to actions by departments, agencies or entities involved in intelligence activities.

9. Fiscal Year 1986 Prohibitions. Section 105 of the Intelligence Authorization Act for Fiscal Year 1986 (Public Law 99-169) provided:

"Section 105. (a) Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in Section 101 and as specified in the classified Schedule of Authorizations referred to in Section 102, or pursuant to Section 502 of the National Security Act of 1947, or to Section 106 of the Supplemental Appropriations Act, 1985 (P. L. 99-88).

"(b) Nothing in this section precludes --

"(1) administration, by the Nicaraguan Humanitarian Assistance Office established by Executive Order 12530, of the program of humanitarian assistance to the Nicaraguan democratic resistance provided for in the Supplemental Appropriations Act, 1985, or

"(2) activities of the Department of State to solicit such humanitarian assistance for the Nicaraguan democratic resistance."

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Section 105(a) of the FY 1986 Intelligence Authorization Act thus prohibited intelligence agencies from providing funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua, except pursuant to Section 101 and 102 of the Act (authorizing a classified amount for infrastructure expenditures and communications equipment); pursuant to Section 502 of the National Security Act of 1947 (relating to intelligence reprogrammings); or pursuant to Section 106 of the Supplemental Appropriations Act, 1985 (providing for a Presidential request for aid, and an expedited congressional vote on the request). 9/

The Department of Defense Appropriations Act, 1986, incorporated in the final continuing resolution for fiscal year 1986 (Public Law 99-190) - incorporated by reference the restriction contained in the Intelligence Authorization Act. Section 8050 of the DOD Appropriation Act, 1986 provides:

"Sec. 8050. None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 105 of the Intelligence Authorization Act (Public Law 99-169) for fiscal year 1986."

The prohibitions contained in Section 105 of the Intelligence Authorization Act for FY 1986 and Section 8050 of the Department of Defense Appropriations Act, 1986 applied by their terms during fiscal year 1986, which ended on September 30, 1986. However, even after these prohibitions expired, funds continued to be unavailable through October 18, 1986 to the same extent as if the prohibition had remained in force, by operation of a series of continuing appropriations resolutions.

9/ For a detailed explanation, see House Report 99-373, the conference report to accompany H.R. 2419, the Intelligence Authorization Act for Fiscal Year 1986, pp. 14-17.

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The preamble and Section 101(o)(1) of the first continuing appropriations resolution for FY 1987 (Public Law 99-434; October 1, 1986) provided with respect to the not-then-enacted Department of Defense Appropriations Act, 1987:

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated . . . for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

". . . (b)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriations Acts:

". . . Department of Defense Appropriations Act, 1987, H.R. 5438 as provided for in section 101(c) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

". . . (4) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986." [Emphasis added]

The preamble and section 101(a)(1) of the first continuing appropriations resolution (Public Law 99-434) also provided with respect to the not-then-enacted Military Construction Appropriations Act, 1987 (title II of which contained funds for aid to the Nicaraguan resistance):

"That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated . . . for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

"SEC. 101. (a)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriations Acts:

". . . Military Construction Appropriations Act, 1987, H.R. 5052 as passed by the House on June 25, 1986, and as passed by the Senate on August 13, 1986; and

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" . . . (5) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986." [Emphasis added]

By virtue of these provisions of the first continuing appropriations resolution for FY 1987, funds were not available under the resolution for intelligence agency support for paramilitary operations in Nicaragua, since such funds had not been available during fiscal year 1986 due to the provisions of Section 105 of the Intelligence Authorization Act for FY 1986 and Section 8050 of the Department of Defense Appropriations Act, 1986. 10/

A further continuing appropriations resolution (Public Law 99-464, October 9, 1986) extended the date of expiration of the first continuing appropriations resolution (which by its terms expired on October 8, 1986) to October 10, 1986; another further continuing appropriations resolution (Public Law 99-465; October 11, 1986) extended the date of expiration of the first continuing appropriations resolution to October 15, 1986; and yet another further continuing appropriations resolution (Public Law 99-491; October 16, 1986) extended the date of expiration of the first continuing appropriations resolution to October 16, 1986. The final continuing appropriations resolution for fiscal year 1987 (Public Law 99-500) became law on October 18, 1986. 11/

10. Fiscal Year 1987 \$100 Million Program of Aid to the Nicaraguan Democratic Resistance. Title II of the Military Construction Appropriations Act, 1987, incorporated in the final continuing appropriations resolution for fiscal year 1987 (Public Law 99-500) established a \$100 million program for

10/ With respect to the program for \$27 million in humanitarian aid for the Nicaragua resistance (see note 7 above), funds for the program ceased to be available as of March 31, 1986. The prohibitions in the first continuing appropriations resolution (Public Law 99-434) on resumption of programs for which funds were not available would appear to have prohibited use of funds to provide humanitarian aid to the Nicaraguan resistance during the period covered by the temporary continuing resolutions at the beginning of FY 1987.

11/ As in previous fiscal years (see notes 2, 4, and 8 above) funding hiatuses occurred between enactment of several of the temporary further continuing appropriations resolutions. Under Section 502(b) of the National Security Act of 1947, enacted by the Intelligence Authorization Act for Fiscal Year 1986, funds available to intelligence agencies (such as two-year money in the CIA Reserve for Contingencies) could not be obligated or expended during the hiatuses to support paramilitary operations in Nicaragua, since Congress had denied funds for such activities. See H. Rept. 99-373, pp. 15-16.

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aid to the Nicaraguan democratic resistance. Section 206(a) in that title provides:

"SEC. 206. (a)(1) The Congress hereby approves the provision of assistance for the Nicaraguan democratic resistance in accordance with the provisions of this title.

"(2) There are hereby transferred to the President for the purposes of this section \$100,000,000 of unobligated funds from such accounts for which appropriations were made by the Department of Defense Appropriations Act, 1986 (as contained in Public Law 99-190), as the President shall designate."

Section 1351(a) of the National Defense Authorization Act, 1987 would supersede to a limited extent the authority granted by Section 206 by providing that the unobligated balances of Department of Defense FY 1986 appropriations transferred for the \$100 million program of aid to the Nicaraguan resistance may come only from certain defense appropriations accounts. Section 1351(a) provides:

"(a) LIMITATION.--Notwithstanding title II of the Military Construction Appropriations Act, 1987, or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to the Department for procurement (other than ammunition)."

Title II of the Military Construction Appropriations Act, 1987 as incorporated in the continuing resolution earmarks portions of the \$100 million of aid to the Nicaraguan resistance for certain purposes. Of the total amount, \$30 million may be used for humanitarian assistance only (Sec. 208(a)), and \$3 million of the \$30 million for humanitarian assistance may be used only to strengthen Nicaraguan resistance human rights programs (Sec. 208(b)). Also, of the total amount, \$5 million may be used only for the Southern Opposition Bloc and \$5 million may be used only for the Misurasata indian resistance force (Sec. 204(d)).

Title II of the Military Construction Appropriations Act, 1987 also establishes limitations on the period of availability for obligation and expenditure of the \$100 million transferred for aid to the Nicaraguan resistance. The funds transferred are available for the same periods of time as they were available under the Department of Defense Appropriations Act, 1986, except that the funds in any event cease to be available after September 30, 1987 (Sec. 206(c)). The \$100 million becomes available in three separate

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releases: (1) \$40 million upon enactment, i.e., October 18, 1986 (Sec. 206(b)), (2) \$20 million after October 15, 1986 and 15 days after the President makes a required report to Congress (Secs. 206(b) and 211(c)), and (3) \$40 million after February 15, 1987 and 15 days after the President makes a required report to Congress (Secs. 206(b) and 211(e)). 12/

Title II of the Military Construction Appropriations Act, 1987 provides that from the date of enactment (October 18, 1986) to February 15, 1987, funds may be used under the program only for: (1) humanitarian assistance; (2) logistics advice and assistance; (3) support for democratic political and diplomatic activities; (4) training, services, equipment and supplies for (a) radio communications, (b) collection and utilization of intelligence, (c) logistics, and (d) small-unit skills, tactics and operations; and (5) equipment and supplies for air defense (Sec. 211(o)(1)). The legislation also provides that, during the same period, the assistance shall be limited by type and value to the matters specified in the classified annex to the President's communication of June 24, 1986 to the Speaker of the House of Representatives and the President of the Senate (Sec. 211(b)(2)). These restrictions applicable from enactment to February 15, 1987 cease to apply after that date if, and only if, after February 15, 1987, the President reports to Congress that the Central American countries have not reached agreement, the Nicaraguan government is not engaged in serious dialog accompanied by a cease-fire and an end to constraints on freedom, and that no reasonable prospect of agreement, dialog, cease-fire and an end to the constraints on freedom exists without additional assistance to the Nicaraguan resistance, and 15 days have passed since the President has so reported to Congress (Sec. 211(e)).

Title II of the Military Construction Appropriations Act, 1987 also provides three absolute restrictions applicable in administration of the program. No U.S. military or civilian personnel may enter Nicaragua to provide military advice, training, or logistical support to paramilitary groups (Sec. 203(e)). No aid may be provided to any group retaining in its ranks any individual who has been found to engage in gross violations of internationally-recognized human rights, smuggling drugs, or significant misuse of public or private funds (Sec. 204(o)). No U.S. military personnel or executive branch employee (other than General Accounting Office personnel [sic] or Department of State Inspector General's office personnel engaged in inspections, investigations, or audits with respect to the aid to the Nicaraguan resistance) may provide any training or other service to, or participate in providing assistance to, the Nicaraguan democratic resistance within the land areas of Honduras and Costa Rica that are within 20 miles of the border with Nicaragua (Sec. 216).

12/ Section 211(c) in title II of the Military Construction Appropriations Act, 1987 prohibited delivery of weapons or ammunition to the Nicaraguan democratic resistance under the title prior to September 1, 1986. Since the Act only became law on October 18, 1986 as part of the final continuing resolution, the restriction was moot upon enactment.

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Title II of the Military Construction Appropriations Act makes clear that nothing in that title authorizes any member or unit of the United States Armed Forces to engage in combat against the government of Nicaragua (Sec. 203(e)), nor does anything in that title permit the President to furnish additional aid to the Nicaraguan resistance from funds other than the \$100 million provided by that title or funds, if any, otherwise specifically authorized by Congress for that purpose (Sec. 209(c)).

Title II of the Military Construction Appropriations Act also includes provisions designed to assure proper supervision and accountability with respect to the \$100 million program of aid to the resistance. Section 207(a) provides that "the Secretary of State (or his designee) shall be responsible for policy guidance, coordination, and supervision of United States Government activities under this title." Section 207(b) provides in part that "any agency to which funds transferred under section 6(a) [sic--section 206(a)] are allocated shall establish standards, procedures and controls necessary to assure that such funds are fully accounted for and are used exclusively for the purposes authorized by this title." The legislation also provides that the presidential reports to Congress required for release of the second and third installments of the \$100 million must include a detailed accounting of disbursements and a detailed statement of implementation of the accounting standards, procedures and controls to assure full accounting and use of the funds exclusively for authorized purposes (Sec. 214).

The Intelligence Authorization Act for FY 1987 (Public Law 99-569) and the Department of Defense Appropriations Act, 1987 as contained in the further continuing appropriations resolution for fiscal year 1987 (Public Law 99-500) contain restrictions applicable to support for the Nicaraguan democratic resistance by the Central Intelligence Agency, the Department of Defense, and other agencies and entities of the United States involved in intelligence activities. Section 106 of the Intelligence Authorization Act for FY 1987 states:

"SEC. 106. Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or pursuant to any provision of law specifically providing such funds, materiel, or assistance."

In addition, Section 9045 of the Department of Defense Appropriations Act, 1987 provides:

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"SEC. 9045. None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 106 of the Intelligence Authorization Act for fiscal year 1987."

By virtue of Section 106 of the Intelligence Authorization Act for FY 1987 and Section 9045 of the Department of Defense Appropriations Act, 1987, the Central Intelligence Agency, the Department of Defense, and other intelligence agencies and entities may not use funds to provide assistance to the Nicaraguan resistance to support paramilitary operations in Nicaragua, except (1) to the extent, if any, authorized by Sections 101 and 102 of the Intelligence Authorization Act for FY 1987, (2) pursuant to Section 502 of the National Security Act of 1947, relating to intelligence reprogramming of funds, or (3) pursuant to an act of Congress specifically providing for such assistance, such as title II of the Military Construction Appropriations Act, 1987.

11. Restrictions in Force. As of the end of the 99th Congress, the following statutory restrictions apply to United States Government support for paramilitary operations in Nicaragua:

- Title II of the Military Construction Appropriations Act, 1987, incorporated in the further continuing resolution for FY 1987 (Public Law 99-500) (restrictions concerning \$100 program of aid to the Nicaraguan resistance)
- Section 106 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99-569) (restrictions concerning CIA, DOD, and other intelligence agency or entity support for paramilitary operations in Nicaragua during FY 1987)
- Section 9045 of the Department of Defense Appropriations Act, 1987 incorporated in the further continuing resolution for FY 1987 (Public Law 99-500) (restrictions concerning CIA, DOD, and other intelligence agency or entity support for Nicaraguan democratic resistance during FY 1987)
- Section 1351(a) of the National Defense Authorization Act, 1987 (restrictions on use of certain defense appropriation accounts to assist Nicaraguan democratic resistance)
- Section 722(d), International Security and Development Cooperation Act of 1985 (Public Law 99-83) (restrictions on use of certain foreign aid funds to assist any person or group in rebellion against government of Nicaragua)

- Section 722(e), International Security and Development Cooperation Act of 1985 (Public Law 99-83)(restriction on use of any funds for activities against government of Nicaragua not both authorized by or pursuant to law and consistent with international law). 14/

14/ Section 203(d) of Title II of the Military Construction Appropriations Act, 1987 as incorporated in the further continuing appropriations resolution, 1987 (Public Law 99-500) provides: "The actions by the United States under this title in response to the concerns described in subsection (a) [concerning actions by Nicaragua] are consistent with the right of the United States to defend itself and to assist its allies in accordance with international law and treaties in force." It would thus appear that Congress has, by operation of law, provided that the \$100 million program of aid to the Nicaraguan resistance satisfies the requirements of Section 722(e) of the International Security and Development Cooperation Act of 1985.